



February 22, 2002

ENGROSSED HOUSE BILL No. 1027

DIGEST OF HB 1027 (Updated February 20, 2002 1:57 PM - DI 105)

Citations Affected: IC 34-10.

Synopsis: Pauper counsel in civil actions. Allows a court to appoint an attorney to represent an indigent person involved in a civil action at no expense to the indigent person under certain circumstances. Requires the appointing court to pay the reasonable attorney's fees and litigation expenses incurred by the attorney.

Effective: Upon passage.

Kuzman

(SENATE SPONSORS — FORD, LANANE)

January 8, 2002, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

January 30, 2002, reported — Do Pass.

February 4, 2002, read second time, amended, ordered engrossed.

February 5, 2002, engrossed. Read third time, passed. Yeas 62, nays 32.

SENATE ACTION

February 11, 2002, read first time and referred to Committee on Judiciary.

February 21, 2002, amended, reported favorably — Do Pass.

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EH 1027—LS 6408/DI 105+



February 22, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED HOUSE BILL No. 1027

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-10-1-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a) This section**
3 **may not be construed to prohibit a court from participating in a**
4 **pro bono legal services program or other program that provides**
5 **legal services to litigants:**

6 **(1) without charge; or**

7 **(2) at a reduced fee.**

8 **(b) If the court is satisfied that a person who makes an application**
9 **described in section 1 of this chapter does not have sufficient means to**
10 **prosecute or defend the action, the court: ~~shall~~:**

11 **(1) ~~shall~~ admit the applicant to prosecute or defend as an indigent**
12 **person; and**

13 **(2) ~~may~~, under exceptional circumstances, assign an attorney**
14 **to defend or prosecute the cause.**

15 **(c) The factors that a court may consider under subsection**
16 **(b)(2) include the following:**

17 **(1) The likelihood of the applicant prevailing on the merits of**

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the applicant's claim or defense.

(2) The applicant's ability to investigate and present the applicant's claims or defenses without an attorney, given the type and complexity of the facts and legal issues in the action.

(d) The court shall deny an application made under section 1 of this chapter if the court determines any of the following:

(1) The applicant failed to make a diligent effort to obtain an attorney before filing the application.

(2) The applicant is unlikely to prevail on the applicant's claim or defense.

(e) All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

(f) The reasonable attorney's fees and expenses of an attorney appointed to represent an applicant under section 1 of this chapter shall be paid from the money appropriated to the court:

(1) appointing the attorney, if the action was not transferred to another county; or

(2) from which the action was transferred, if the action was transferred to another county.

SECTION 2. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred House Bill 1027, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

KUZMAN, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1027 be amended to read as follows:

Page 1, line 13, delete "." and insert **"if the court determines that proceeding without counsel may lead to an erroneous decision."**

Page 1, line 14, delete "is impoverished according" and insert **"earns not more than two hundred percent (200%) of the federal poverty guidelines"**.

Page 1, line 15, delete "to the federal poverty guidelines".

Page 1, line 17, delete "that the person:" and insert **"that:"**.

Page 2, line 1, after "(1)" insert **"the person"**.

Page 2, line 1, delete "financial resources" and insert **"sufficient means"**.

Page 2, line 4, after "(2)" insert **"the person"**.

Page 2, delete lines 5 through 6.

Page 2, line 7, delete "(4)" and insert **"(3) the person "**.

Page 2, line 7, delete "or".

Page 2, delete line 8, begin a new line block indented and insert:

"(4) the person's claim or defense is patently frivolous; or

(5) the assigning of counsel would severely and adversely affect any specific fiscal or other governmental interest."

Page 2, after line 11, begin a new paragraph and insert:

"(e) The reasonable attorney's fees and expenses of an attorney assigned to represent an applicant under this section shall be paid from the money appropriated to the court by the county fiscal body as part of the regular budgeting process."

(Reference is to HB 1027 as printed January 31, 2002.)

KUZMAN

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred House Bill No. 1027, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1027 as reprinted February 5, 2002.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 1.

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